IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

WP(C).No. 16564 of 2007(V)

OS.121/2007 of PRINCIPAL SUB COURT,ERNAKULAM

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PETITIONER:

K.BALAKRISHNAN, S/O.RAMAN NAIR, AGED
57 YEARS, MADATHIL PARAMBIL HOUSE,
KOTHANELLOOR P.O, KOTTAYAM DISTRICT.

BY ADV. SRI.ABRAHAM JOHN

RESPONDENTS:

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1. P.A.SADHASIVAN, S/O.AYYAPPAN, AGED
   72 YEARS, PUTHENKALAKKADA HOUSE, MUHAMMA
   VILLAGE, CHERTHALA TALUK, KAYIPPUEEN,
   ALAPPUZHA DISTRICT.

2. DEPUTY GENERAL MANAGER,
   COCHIN SHIPYARD, ERNAKULAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.(C) No. 16564 OF 2007 V
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Dated this the 31st May, 2007

J U D G M E N T

This writ petition is filed to direct the Principal Subordinate Judge, Ernakulam not to vacate Ext. P2 garnishee order issued to the 2nd respondent on accepting immovable property as security to the plaint claim. At the outset it has to be stated that a suit is instituted by the plaintiff for realisation of the amount allegedly due to him from the defendant. The scope of Order XXXVIII Rule 5 is to ensure that in case the plaintiff obtains a decree his interest shall not be defeated by indiscriminately allowing the judgment debtor to sell away his property or do away with all his assets so as to prevent the petitioner from enjoying the usufructs of the decree. In this case to start with there was an order under the garnishee proceedings. Later, the defendant offered some security and the court found that the security so offered cannot be accepted, because there are other encumbrances on the property and therefore rightly rejected the same. Now the defendant wants to furnish

security of immovable property which belonged to other persons with the consent and affidavit of those persons. Order XXXVIII Rule 5 only stipulates to release attachment or not to attach on furnishing of sufficient security. Whether the security is sufficient or not is for the court to decide after hearing both the parties. When an immovable property is offered as a security and the court finds on enquiry that will be a sufficient security in the case then one cannot insist that the said security cannot be accepted, but it must be in the form of some other security. Therefore, the request of the learned counsel for the writ petitioner that there should not be any release of the garnishee proceeding cannot be accepted. But at the same time I make it very clear that the court while accepting another security has to satisfy itself that the said security is sufficient to discharge the decree debt in case of a decree and it is a realisable security and then alone that security can be substituted and the garnishee order can be varied or modified. In arriving at the said decision the court is also bound to hear the plaintiff because the

plaintiff will be able to point out the lacuna or the other defects that may be there in the security which is proposed to be furnished by the defendant. Therefore, at this stage I do not wish to pass any order and the writ petition is dismissed, but it is made clear that when the court wants to vary or vacate the garnishee order it shall find out a suitable and sufficient security after hearing both sides and then only pass appropriate orders.

M.N. KRISHNAN
JUDGE

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